IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 29 (M/B) of 2003

Rama Dairy Products Ltd. (A company registered under the Indian Companies Act)

..... Petitioner

Versus

1. State of Uttaranchal through Secretary Revenue
2. Vyapar Kar Adhikari, Khand-A, Roorkee, Distt. Hardwar

.....Respondents

Sri Alok Singh, Senior Advocate, learned counsel for the petitioner.
Learned standing counsel for the respondents.

Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

Dated: March 21, 2006

By means of this writ petition, the petitioner has prayed for the following reliefs:

A. To issue writ order or direction in the nature of certiorari quashing the notice dated 21.12.2002 (Annexure No.3 to the writ petition) and order dated 30.12.2002 (annexure No.6 to the writ petition) passed by Respondent No.2.

B. To issue writ order or direction in the nature of mandamus commanding the respondents to release the goods seized by the Respondent No.2 immediately in favour of the petitioner.

C. To issue writ order or direction in the nature of mandamus/prohibition restraining the respondents not to proceed with the matter

pursuant to the notices and order impugned herein.

D. To pass such further orders which are just and proper in the facts and circumstances of the case.

2. The petitioner company has a manufacturing unit at Aligarh within the State of U.P. and having U.P. Trade Tax Registration No.BR-5075023 dated 18.05.1994 and Central Sale Tax No.BR-5075023 dated 18.05.1994 four wheeler license No.BR-441(R) dated 21.01.1995 issued by the Trade Tax Authorities, District Bulandshahar. The company is engaged in Dairy business of manufacturing and distribution of processed liquid milk and milk products such as Skimmed milk powder, Dairy Whitener & Ghee (only as an ancillary product) etc. The petitioner has taken a godown on leasein Kasba Jwalapur, District Hardwar within the State of Uttaranchal and has also obtained Uttaranchal Trade Tax Registration No.HR-5036285 issued by Trade Tax Authorities, Hardwar. The product of the petitioner company was transported from petitioner's factory Aligarh to its godown in Kasba Jwalapur, Distt. Hardwar for the alleged purpose of storing it and not for any immediate sale purpose. The vehicle by which the goods were being transported was intercepted and checked by the Respondent No.2 in Roorkee and was taken into custody as the driver was not having relevant documents in his possession and has not reported to the Check Post on 21.12.2002. A show cause notice under Section 28-A of U.P. Trade Tax Act (***hereinafter will be referred to as the Act***) was issued to the petitioner. The petitioner submitted his representation on 24.12.2002. The petitioner also submitted its reply on 30.12.2002. The main contention in the reply was that it was simply a

transfer from its manufacturing unit to its godown in Uttaranchal and it does not amount to **sale/trade** and the provisions of Section 28-A of the Act were not attracted. The notice dated 21.12.2002 issued under Section 28-A of the Act has been impugned in this writ petition and a writ of certiorari has been sought to quash the said notice and to drop the further proceedings in pursuance of the said notice and a further writ of mandamus has also been sought restraining the respondents not to proceed with the matter in pursuance to the said notice.

3. The main ground of challenge of the notice is that Section 28-A of the Act requires an importer to import the goods from one State to another State only under a valid Form 31 and the petitioner is neither an importer nor a trader because the goods were being transported from its own factory to its own godown, though the factory is situated in Aligarh and the godown is situated in the Jwalapur, District Hardwar. Section 28-A of the Act reads as under:-

28-A Import of goods into the State against declaration- (1) Any person (hereinafter in this section referred to as the importer) who intends to bring, import or otherwise receive, into the State from any place without the State, any goods [other than the goods exempt under clause (a) of Section 4] in such quantity or measure or of such value, as exceeds.

(a) (i) Twenty kilograms in the case of food grains, cereals, pulses, soybean and all products thereof, and all raw materials including resin, rosin or oilseeds used fro extracting oils of any kind; and

(ii) rupees fifty, in the case of other goods; or

(b) The quantity, measure or value notified by the State Government in that behalf, in connection with business, shall obtain the

prescribed form of declaration on payment of the prescribed fee from the assessing authority having jurisdiction over the area where his principal place of business is situated or, in case there is no such place where he ordinarily resides:

Provided that where the importer intends to bring, import or otherwise receive such goods otherwise than in connection with business, he may, at his option, in the like manner obtain the prescribed form of certificate].

(2) Where such goods are to be consigned by road, -

- ***(a) the importer shall furnish to the consignor the declaration in the prescribed form in duplicate duly filled in and signed by him and driver or any other person-in-charge of any vehicle carrying any such goods shall carry with him the copes of such declaration duly verified by the consignor in the prescribed manner together with such other documents as may be prescribed, and shall before crossing any check-post or barrier established under Section 28, deliver one copy of such declaration to the officer-in-charge of such check-post or barrier and the other copy of the declaration and the remaining documents alongwith the goods to the importer or his agent;***
- ***(b) the officer-in-charge of the check-post or barrier shall grant a receipt for the copy of declaration delivered to him and it shall not be necessary for the driver or the person-in-charge of the vehicle to deliver any copy of the declaration at any other check-post or barrier that he may cross, if he shows such receipt to the officer-in-charge of such other check-post or barrier;***
- ***(c) where such goods are brought into the State from without by a road on which no check-post or barrier is established or, where for any other reason a copy of the declaration could not be delivered at a check-post or barrier as aforesaid, the consignee shall after obtaining delivery of such goods submit to the assessing authority one copy of the declaration by the next working day;***
- ***(d) the importer shall preserve the other copy of the declaration and other documents delivered by him or to his agent under Clause (a) for such period as may be prescribed and***

produce them before the assessing authority wherever demanded by it within such period.

3. Where such goods are consigned by rail, river, air or post the importer shall not-

(a) obtain or cause to be obtained delivery thereof unless he furnishes or causes to be furnished to such officer as may be authorized in this behalf by the State Government, a declaration in the prescribed from in duplicate duly filled and signed by him for endorsement by such officer;

(b) after taking delivery, carry the goods away or cause the goods to be carried away from the railway station, steamer of both, station, air-port or post-office, as the case may be, unless a copy of the declaration duly endorsed by such officer is carried with goods.

4. Where such goods are brought into the State as personal luggage, the person bringing them shall carry with him the declaration in the prescribed form duly filled in and signed by the importer, and the importer shall submit the same for endorsement by the officer referred to in sub-section (3) by the next working day.

[(4-A) Where any person intends to bring, import or otherwise receive into the State from any place without the State any goods referred to in sub-section (1) otherwise than in connection with business and obtains the prescribed from or certificate, the provisions of sub-sections (2), (3) and (4) shall, mutatis mutandis, apply as if the word "certificate" were substituted for the word "declaration" used therein].

(5) The driver or other person-in-charge of any vehicle carrying any goods referred to in the preceding sub-section shall stop the vehicle at every such check-post or barrier or when so required by any officer authorized under sub-section (2) of Section 13, at any other place, and keep it stationary for so long as may be considered necessary by the officer-in-charge of the check-post or barrier or the officer authorized under sub-section (2) of Section 13, as the case may be, and allow him to search the vehicle and inspect the goods, and all documents referred to the preceding sub-sections and shall, if so required give his name and address

and the names and addresses of the owner of the vehicle and of consignor and the consignee of the goods.

(6) Where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applied without being covered by the proper and genuine documents referred to in the preceding sub-sections and if for reasons to be recorded he is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods.

(7) The provisions of sub-sections (2), (6) and (8) of Section 13-A shall mutatis mutandis apply to such detention as they apply to seizure under that section.

(8) Nothing contained in this section shall be construed to impose any obligation on any railway administration or railway servant or the post office or any officer of the post of office, or to empower any search, detention or seizure of any goods while on a railway as defined in the Indian Railways Act, 1890, or in a post office as defined in the Indian Post Officer Act, 1983.

5. As per the definition provided in U.P. Trade Tax Act, 1948, **"importer"** *means in relation to any goods means the dealer who makes the first sale of such goods after their import in to the State.*

6. Undisputedly, the petitioner manufactures the milk products and sells it and for sale it was taken to its godown from State of U.P. to State of Uttaranchal which is import from one State to another state. From the Jwalapur godown, the sale is affected and the goods are being sold, therefore, the petitioner becomes the **importer.** Hence, the provisions of Section 28-A of the Act are fully attracted in the case and thus the notice issued under Section 28-A of the Act is within the

competence and cannot be said to be without jurisdiction, as at the time of checking the petitioner's driver could not produce neither any declaration nor Form 31. Therefore, all the proceedings drawn in pursuance of the impugned notice are valid. However, any assessment if made is subject to the appeal and revision under the U.P. Trade Tax Act, 1948.

7. For the reasons recorded above, the writ petition is devoid of merit and is hereby dismissed. No order as to costs.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

Rajeev Dang